

Alec Hansen

Testimony OR COMMENTS ON

SB-SS

AD

From: David Nielsen [DNIELSEN@ci.helena.mt.us]  
Sent: Tuesday, February 03, 2009 1:35 PM  
To: Tim Burton; Alec Hansen  
Subject: SB 55

EXHIBIT 5  
DATE 2/3/09  
SB 65

I quickly reviewed the bill and oppose sections 1 and 2, which limit local government power. There are three reasons:

1. In the broad draft of these two sections, local government would lose zoning authority over commercial fertilizers, where they could be sold or stored. The fertilizer bulk plant could be constructed anywhere in the state and its cities without zoning prohibition or control. This is dangerous to zoning.
2. Sections 1 and 2 are unnecessary since the state expressly has authority over labeling and use of fertilizers (Title 80, chapter 15). Under 7-1-113, self-government powers do not extend to powers inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control. " Easily Title 80 chapter 15 fits the bill. For general power local governments, they can only do what is allowed by statute and I don't see anything in 7-1-4124 that allows them to intrude into commercial fertilizer regulation, except through zoning.
3. The prohibitions deny cities regulatory authority over use of fertilizers. Lawn fertilizers are a known source of pollution in storm water control in cities. Since cities are regulated by DEQ for storm water quality by BMP (best management practices), the inability to regulate excessive fertilizer use and nitrate contamination of storm water would be difficult.

I see no legal reason for Sections 1 and 2.